

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

AIR PASSENGER RIGHTS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

CROSS-EXAMINATION ON AFFIDAVIT

of VINCENT MILLETTE

on October 22, 2025, at THUNDER BAY, Ontario
(via videoconference)

APPEARANCES:

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Counsel for the Applicant

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WEDNESDAY, OCTOBER 22, 2025

VINCENT MILLETTE: AFFIRMED

CROSS-EXAMINATION BY MR. JUDSON:

1. Q. Good morning, Mr. Millette. My name is Douglas Judson and I represent the applicant in this proceeding, Air Passenger Rights. As I mentioned before we went on the record, I am here with my student, Kaitlin Brookes, and she'll just be observing and taking notes for this morning's examination. Can we just begin with a few housekeeping items? Can you just tell us how you prepared for this morning's cross-examination?

A. So, I reviewed my affidavit, I reviewed both affidavits of Mr. Lukacs, and also reviewed *Canada Transportation Act*.

2. Q. Okay. And just for the court reporter's benefit, I will spell out my witness' name because it's a little bit unique. So, Amy, it's first name Gabor G-A-B-O-R, last name is L-U-K-A-C-S. Okay. And we reviewed earlier who was in the room with you. Just, do you have your affidavit in front of you, Mr. Millette?

A. Yeah, I have all of them here just, that I just described in front of me.

3. Q. Okay, great. So, if I refer to the paragraph number or page number, I don't need to share the screen for those? You've got them in front of you?

A. That's right.

4. Q. Okay, great. So, just again for the benefit of the record with some of the nomenclature, so, where I refer to the *Act*, I'm referring to the *Canada Transportation Act*. Where I refer to the Agency, I'm

referring to the Canadian Transportation Agency. When I refer to the A.P.P.R., I mean the Air Passenger Protection Regulations, and when I refer to a C.R.O., I am referring to a Complaint Resolution Officer. Is that okay with you, Mr. Millette?

A. Yes.

5. Q. Okay. So, my understanding from your affidavit is that you are currently the Director of the National Air Services Policy at Transport Canada, correct?

A. That's correct.

6. Q. And just so we can understand this a little bit better, you're employed by the federal Department of Transportation and not the Agency, correct?

A. That's correct.

7. Q. And so, your role would include developing and implementing policies which govern the Agency and are perhaps overseen by the Agency, but you're not part of the Agency?

A. Yes.

8. Q. Can you maybe just help me understand the policy development roles of the department compared to the Agency?

A. So, the department would develop the policy itself. For example, if we talk about certain changes that came about in 2023, we developed the policy behind those changes and then we did just this, we drafted the changes, and part of those changes, there's authorities for the Agency to develop regulations. So, then the agency goes about developing the regulations based on the information.

9. Q. Okay. So, the Agency in effect can develop

regulation within its mandate based on the policy pronouncements that are put forward, you know, through the, through the department?

A. That's right.

10. Q. Okay. So, your role encompasses, among other things, I'm sure you do many things, but it would encompass the development and implementation of policy governing Canadian air carriers and commercial airline services, correct?

A. That's correct.

11. Q. And consequently then, your role would directly oversee the policy framework that is at issue in this application which relates to air passenger complaint proceedings, right?

A. That's correct.

12. Q. Okay. And so, you would be familiar on sort of a day-to-day working basis with the legislative and regulatory structure and the history of those frameworks that create the air passenger rights system in Canada, would that be fair?

A. That's fair. That's right.

13. Q. Okay. So, one of the things I want to do, because I know that the history of air passenger rights has been sort of rapidly changing over, over a short period of time, is to make sure we're on the same page about sort of the evolution of some of that and that there's clarity on that. So, you would agree with me that the current complaint framework for air passenger rights is largely reflected in the 2023 amendments to the Act beginning at section 85.01?

A. That's right.

14. Q. Okay. And the A.P.P.R., that's a regulation

created under I think it's section 86.11 of the Act, but it predates those amendments. Does that ring a bell?

A. Yeah, that's, that's right, but in the 2023 amendments we've put in a new, new regulatory-making authority for the Agency to change the A.P.P.R. It's not yet enforced, but the Agency has been working on those new ideas, and they were published in CG1 just before Christmas 2024.

15. Q. Okay. Thank you for that. Okay, I'm just going to share my screen and show you something.

A. Oh, just for clarity, when I said CG1, I meant Canada Gazette number one.

16. Q. Oh, thank you. Great. So, can you see the Justice Canada website I've just shared? Can you see that?

A. Yes.

17. Q. Okay. So, I just want to confirm, so co-existing with the complaint framework right now under the 2023 amendments to the Act and the A.P.P.R. are these 2014 rules which are entitled *Dispute Proceedings and Certain Rules Applicable to Air Proceedings*. Correctly, these are still in effect as well?

A. Yes.

18. Q. Okay. And if I'm understanding it correctly, the sum of the new enactments that were created in 2023 essentially made it so that those 2014 rules no longer apply to most air passenger rights. Would that be a fair summary?

A. Yes, that's right, unless per the Act, unless the complaint is referred to a panel of Agency members, then those rules would apply.

19. Q. Okay, no, thank you for that.

20. A. So, if the complaint is reviewed and resolved entirely at the C.R.O. level, then those don't apply.
20. Q. Okay. And just to make sure I'm understanding completely, so, this is - and can you see my screen? There's a section of the Act showing.
21. A. Yeah.
21. Q. I don't know if you can read it on your screen that well, but my understanding, and tell me if you agree with this, is that it's section 85.03, which I've just highlighted on the screen, that is the section which takes the air passenger complaints out of the 2014 rules. Would you agree with that?
22. A. Yes.
22. Q. Okay. All right. So, and I understand from my own review of the regulatory landscape here is that prior to the 2014 rules there were a previous set of rules from 2005 and those were the Canadian Transportation Agency general rules, but those are now repealed, is that correct?
23. A. I do not know that. My involvement in this file started in 2018.
23. Q. Okay.
24. A. So, things that pre-date by a longshot 2018, I would have no understanding, no knowledge of that.
24. Q. Understood. In summary though, based on your knowledge, in 2023, we have the current framework created under the Act and that diverts most air passenger complaints from, away from the process under the 2014 rules, but the 2014 rules, in your evidence, continue to apply to complaints that are referred to a panel and to other types of complaints that the Agency might deal with that are not air passenger complaints. Would that be fair

to say?

A. That's my understanding.

25. Q. Okay, thank you. So, I presume you're aware that this application is concerned with the confidentiality attaching to the decisions and orders of Conflict Resolution Officers under the air passenger complaint process, correct?

A. Yes.

26. Q. Okay. And you'd agree with me, just so we're on the same page - I don't think this is controversial, but you would agree with me that those confidentiality rules are codified in section 85.09(1) of the Act, right?

A. Yes.

27. Q. Okay. And I'm just going to read that section so it's clear on the record. It says, "All matters related to the process of dealing with a complaint shall be kept confidential unless the complainant and the carrier otherwise agree and information provided by the complainant or the carrier to the Complaint Resolution Officer for the purpose of the Complaint Resolution Officer dealing with the complaint shall not be used for any other purpose without the consent of the one who provided it." So, you would agree with me that this is fairly broadly crafted so that it imposes confidentiality over any document that the C.R.O. deals with, whether that's in a mediation context or a decision-making context, in relation to a complaint, is that fair?

A. Yes.

28. Q. Okay. And the only exception to that is if the party who provided the document consents to its release?

A. That's what the Act says, yeah.

29. Q. Okay. Do you have any information you can give us about how many air passenger complaints per year are currently being received through this process under the 2023 amendments?

A. It's about 35-40,000 complaints.

30. Q. On an annual basis?

A. Yes.

31. Q. And I guess that's, really we only have two years of full data on that at this point, right?

A. Yes.

MR. JUDSON: And I wonder, Counsel, would you be in a position to provide an undertaking for those statistics?

MS. ROBERTSON: No, we do not give undertakings on cross-examinations.

MR. JUDSON: Okay, very good.

BY MR. JUDSON:

32. Q. And those statistics, Mr. Millette, that you described around air passenger complaints, would those include complaints on accessibility issues, or general complaints relating to tariffs and conditions of carriage?

A. It wouldn't include accessibility issues. But that said, when a complaint is filed, you could select numerous issues as to, as a complainant as to what your complaint is about. So, that's where accessibility is selected with an A.P.P.R. issue, it could fall into those. But generally speaking, accessibility complaints are dealt separately.

33. Q. Okay. So, if I understand that correctly, if the complainant complains about an accessibility issue as

well as like a fare issue under the A.P.P.R., does it go to a C.R.O., or does it go through the 2014 rules?

A. It may, it may go to a C.R.O. It depends on the parlance of the issue. Someone would look at it and decide which, at the Agency which way it goes.

34. Q. Okay. So, there's a bit of a triage function that happens when the complaint comes in to figure out how it's directed?

A. Yeah.

35. Q. Okay. Now, those different processes under the 2014 rules versus the C.R.O's process have different, they're treated differently in terms of confidentiality, correct?

A. Uh, no, not correct.

36. Q. Okay. And just help me understand that. The rules as I understand them make clear in the 2014 regulation that confidentiality is not automatic. So, I just want to understand your response on that.

A. Yeah. Just, just to clarify, under the 2014 process, confidentiality extends from filing the document-, the complaint to the adjudication process, and then the adjudication process becomes an open court type of process where generally speaking the information may become public. But the Agency would take certain steps to protect confidential, confidential and sensitive information such as credit card numbers or like pictures of passports and things like that. While under the new process, all the information is kept confidential other than what is being published in the statistics at the end by the C.R.O.

37. Q. Okay. Would it be fair to say that the responding parties to the complaints that are heard by

CROs are a fairly concentrated group?

A. What do you mean by that?

38. Q. In that there's not very many responding parties. They're a fixed number of corporations generally.

A. You mean the airlines?

39. Q. Yes.

A. Yes.

40. Q. And so, if you - and maybe you don't have an exact number at your fingertips, but if you were to provide an estimate, like what proportion of the complaints would be about the-, let's say the four largest airlines in, in Canada?

A. Oh, I would say the vast majority of complaints. I don't have the exact number at my fingertips, but it's probably around 80 percent of the total.

41. Q. Eighty percent, something like that? Okay. And so, it would be safe to assume that those parties accounting for 80 percent of the complaints would have a fairly sizable collection of decisions and orders in their own possession relating to those complaint proceedings?

A. Under the C.R.O. process?

42. Q. Yeah. Yes, that's what I mean.

A. Well, they would have decisions, but they wouldn't have any other information other than their own information that they provided to the C.R.O. The confidentiality rules apply to them, too. So, they wouldn't have any more information than what they have in their records. And...

43. Q. Would they not, do they not receive a copy of

the complaint as well?

A. So, under the current process, the complainant has to go to the airlines, to the air carrier first. So, yes, they would have a copy of the complaint through that process.

44. Q. Okay. And so, presumably, the complaint - you know, assuming - that assumes the passenger has made an identical complaint at the point where they come to the C.R.O., correct?

A. Yes.

45. Q. Okay. But generally, they would have, at a minimum, they would have the decisions and orders resulting from the complaints to which they are a party?

A. Yes.

46. Q. Okay. Do you know if the airlines are typically represented by legal counsel in these proceedings?

A. No, I don't know.

47. Q. Okay.

A. Yeah, like Air Canada and Westjet would have their own internal legal team, but I don't know to what extent they are involved with those complaints.

48. Q. Okay. So, when a complaint is submitted, assuming it meets the requirements to be, to be dealt with by the C.R.O., my understanding from the process is that there is initially an attempt at mediation, following which the C.R.O. adjudicates and renders a decision if mediation is unsuccessful. Is that a fair summary?

A. Yes, the participants to the complaint can select to have it mediated, and then if it's not successful, it goes to a panel decision by the C.R.O.

49. Q. And so, generally, would you agree with me that the mediation component is effectively optional?

A. It has - the *Act* requires it to be offered.

50. Q. Right. But it does not require that the parties engage in it productively necessarily?

A. That's right.

51. Q. Okay. I just want to share a document with you. Give me one moment. All right, so, this document - I'll just go to the top of it. You'd agree with me this is the guideline on the Canadian Transportation Agency's complaint resolution office, air travel complaints process?

A. Yes.

52. Q. All right. So, I'm just going to scroll down. Section 12 deals with mediation. And I just want to confirm that it says here - I'll read - subsection (1) says, "If a complaint is eligible, the Complaint Resolution Officer will perform a check to determine whether the passenger and airline have agreed to mediate the complaint." And then at subsection (4), it begins with the words, "If both parties have agreed to mediate," and then it goes on. So, you'd agree with me that there is a requirement that the participants agree to mediation for that step to actually be part of the process?

A. Sure, yes.

53. Q. Okay, thank you. How does the Agency store documents and records relating to these different stages of the C.R.O.'s process? Like are they, are they compartmentalized somehow within the Agency? I just want to better understand that.

A. I am not familiar with that. I don't...

54. Q. Okay. So, you wouldn't know *per se* if there's

a distinction between materials relating to a mediation versus a final decision, the final decision stage of the process within the Agency's systems?

A. I don't know.

55. Q. Okay. Do you have any information you can give us about the frequency with which the Agency receives requests for copies of decisions and orders from CROs?

A. I do not know.

56. Q. Okay. Is that something that's tracked by the agency?

A. I, I don't know.

57. Q. When the C.R.O. is getting to the stage in the process, just again to help me understand the organization of the materials that are involved, and they make a decision, is the decision a separate document or instrument from the order itself that the C.R.O. might be making, or is it all sort of one document that sets out what is supposed to happen?

A. I'm not sure I understand. Can you...

58. Q. Yeah, sure. So - and this might make more sense to your counsel than to you, but I'll try a different way. So, often in court proceedings, we will get the presiding official's reasons for decision, but the actual order which has the specific things that are being ordered to happen is a separate document. So, I just want to understand if the C.R.O. organizes their, distinguishes between decisions and orders in that same way, or if you know if it's all just one, one document that is produced?

A. I don't know that.

59. Q. Okay. So, just a little bit further on the

orders that the C.R.O. makes. So, my understanding of the legislation is that where a C.R.O. makes an order - and I believe the section is 85.07(1). You'd agree with me on that? That's the section setting out what they can order?

A. Yes.

60. Q. Okay. And then once they've made that order and that order is filed with the Agency, the C.R.O.'s order becomes enforceable as though it were an order of the Agency. Is that a fair summary?

A. Just give me one second.

MS. ROBERTSON: Can you just repeat the provision? I think we're...

MR. JUDSON: Yeah, give me a second. I'll see if I can find it in the *Act* and maybe that'll help us along here. One second. So, I think the relevant section that I'm referring to is 85.07(3).

A. Yeah.

MS. ROBERTSON: Yeah. We had just found it at the same time.

MR. JUDSON: Okay. We're on the same wavelength. That's good.

BY MR. JUDSON:

61. Q. So, I guess just for the record, I'll just repeat my question. So, would you share my understanding that when a decision is made by the C.R.O., once filed with the Agency, it becomes enforceable as though it were an order of the Agency?

A. Yes.

62. Q. Okay. So, then I guess what I'm trying to understand is that the policy views the C.R.O. as a separate decision-maker from the Agency itself, but the

order once it's made and filed with the Agency becomes effectively an Agency order. Is that a fair summary?

A. For enforcement purposes, yes.

63. Q. Right, okay. Now, if we go, if we look to the Act a little bit further and we go to section 33(1), my understanding of that section is that an order of the Agency can be made into an order of a federal court or a superior court and be enforceable in the same manner. So, would it not be the case that a C.R.O.'s order can be filed with the Agency, then it becomes enforceable as though it's an order of the Agency, and that order can be taken to a court and then be enforced through the court's enforcement process if a party so desired?

A. That's right.

64. Q. Okay. So, is it not the case then that even though the Act imposes confidentiality over all of the documents in the C.R.O.'s process including the decisions and orders, that a party can get around that by taking their decision and order to a court relying on these sections and thereby it would be a public record because it would be presumptively open in the court's file?

A. I guess that's right, if the matter goes to court, it becomes public information.

65. Q. Right. And that would still require, of course, that it would be the party to the C.R.O.'s complaint that did that, right? Another person couldn't do that. But it would still result in some public version of the C.R.O.'s decision, you'd agree with that?

A. Sure.

66. Q. Okay. Okay, so, I'll try to take you just to a few parts of your affidavit. If you want to just have that handy in front of you, Mr. Millette. So, at

paragraph 6(e), you state that the Agency's functions include implementing and enforcing Canada's international transportation agreements. Would this include enforcing passenger's rights under instruments like the Montreal Convention?

A. Yes.

67. Q. Okay.

A. Well, just to be clear, the requirements of the Montreal Convention are rolled into the A.P.P.R. So, they would enforce the A.P.P.R.

68. Q. Right, okay. So, the requirements of the Montreal Convention are incorporated by reference through the A.P.P.R.?

A. Not by reference. Directly in the A.P.P.R.

69. Q. Okay. Okay, thank you. At paragraph seven of the affidavit, you specify that as part of the function of your department, you assess proposals from the Agency on policy matters, including gathering industry perspectives in relation to policy issues. You'd agree that's what it states?

A. Yes, that's right.

70. Q. Okay. And so, in relation to the policies that we've talked about today like the 2023 amendments to the Act and the A.P.P.R., you would, you would as part of that function get industry or airline input on those, on those policy proposals?

A. Uh, so, if it's - we have to distinguish between what we and what the Agency do. So, if we were - like under the 2023 amendments to the Act, we consulted with the industry. But if it's the-, for example the development of the A.P.P.R. which is led by the Agency, the Agency would consult with the industry on this. But

it would often happen that the carriers would share their views directly with us and we may share that with the Agency.

71. Q. Did - okay. And did the, did the carriers share views relating to the 2023 amendments to the *Act*?

A. Yes.

72. Q. Are you able to share with us, like were there any general themes in those-, in the input that was provided?

A. Well, the general theme was that the complaint resolution process was really inefficient and in fact it was a bit weak. We needed a more efficient and streamlined process to deal with complaints.

73. Q. Did the air carriers push government or the Agency on the need for confidentiality of the-, over the C.R.O.'s process?

A. No, that's a decision coming out of Transport Canada.

74. Q. Now, you might have seen in our client's reply affidavit that he referred to various decisions of the Agency which describe the application of the open court principle to decisions of the Agency. I just want to make sure you actually saw that in his materials.

A. I saw the references, but I'm not familiar with any of the cases mentioned.

75. Q. Fair enough. So, why would it have been the position of the department to impose confidentiality through section 85.09 through the policy recommended relating to that-, which resulted in that section when it appears the past practice has been a very robust understanding that the, that the adjudicative processes of the Agency were open?

A. So, under the old process, the Agency would still ensure that private and sensitive information would not be disclosed publicly, such as I said before, the credit card number or a picture of a passport and things like that. And the goal of having the confidentiality applying to the entire process was to, one, ensure that air carriers and passengers would engage in meaningful mediation, and also ensuring that personal information of passengers wouldn't be disclosed publicly. Because often a passenger, despite indications of the Agency website, they wouldn't know that their information would-, could become public. So, we wanted to protect that while at the same time give enough information in the public domain for passengers to assess whether or not they should file a complaint. So, which is why we've opted to give-, to ensure that information about the date, the flight, and whether or not any compensation was awarded and whether or not the delay or the disruption was within or outside of its control should be made public so other passengers on the same flight can make a decision-, can use that to make a decision to file a complaint. We strongly believed that this was sufficient information for that purpose.

76.

Q. Okay. So, paragraph 14 of your affidavit, you describe what adjudication looked like under the framework as it existed in 2019. And you describe a three-stage process of facilitation, mediation, and adjudication. What I understand from this section of your affidavit is that your evidence is that it was members of the Agency that were the persons carrying out those three stages. And I just want to clarify that your evidence is that it was actually the G.I.C. like appointees that were doing that work, it seems - go ahead.

A. Well, my response to that, I think the operate word in that paragraph is the word "overseen." So, yes, the entire process would be overseen by, by a member, and a member would have, members have functions on the three steps.

77. Q. Okay. But the actual day-to-day work of those steps would be carried out by Agency staff or others that were designated for those functions?

A. Yes, I agree with that.

78. Q. Okay. So, at paragraph 15 of your affidavit, you state that by November of 2022 - so, at this point we're just before the 2023 amendments come into play, I think - that it was taking at that point in time an air passenger complaint an average of 373 days to go through the process and that it was determined that that process was disproportionate for dealing with the relatively low monetary value of the claims. And so, that, just so I'm understanding, is the impetus for the 2023 reforms?

A. That's right.

79. Q. I believe the paragraph suggests that given the low value of the claims, they should not require attention from G.I.C. appointees. Was every claim actually getting attention from those individuals?

A. Every claim going through adjudication, which was the vast majority of them, yes. The G.I.C. member would have to review the complaint and issue a formal order that would be published on the Agency website.

80. Q. Okay. So, would it be your evidence then that they would do that with the assistance of Agency staff to sort of make recommendations to support them...

A. Yes.

81. Q. Okay. Support them in that role. Okay.

A. But in that - just to clarify, in that role, the Agency staff would only be there to support and make a recommendation, but the decision is a decision of the member.

82. Q. Okay, thank you. I'm just going to share my screen with you again. All right. So, this is a page from CanLii. Can you see this on my screen, on my screen?

A. Sure, I can see it.

83. Q. Okay, thank you. So, this is a decision of a small claims court in Nova Scotia. The cases is *Geddes v. Air Canada*, 2021 NSSM 27. I wanted to just take you to the opening paragraphs of it, specifically paragraphs two and three. And I'll maybe just give you a moment just to look at those. Let me know if you need it to be bigger or anything.

A. No, that's fine.

84. Q. Let me know once you've read that.

A. Okay.

85. Q. Okay. So, would you agree with me that based on that passage that this court is suggesting that the complexity of the A.P.P.R. is actually one of the issues and that, would you agree that perhaps that that is contributing to the backlog in hearing these complaints?

MS. ROBERTSON: I'm sorry, you're asking him to comment on a legal case. That, for me, is a question of law that I wouldn't want a witness to be opining on. If you wanted to ask him the question as a purely factual question, please feel free to do so.

MR. JUDSON: Yeah, for sure. And just for clarity, I'm just providing that as background. I don't intend for him to comment on the legal decision at

all. But I'll just reframe the question and maybe that'll be better.

MS. ROBERTSON: Thank you.

BY MR. JUDSON:

86. Q. So, my question, Mr. Millette, is just would it not be that the complexity of the A.P.P.R. in its current form, because I think it's the same A.P.P.R. that we would have had in 2021, is actually one of the, one of the reasons that it is taking so long to adjudicate these complaints?

A. Yes, I would agree.

87. Q. So, I think you alluded to this earlier at the outset of our examination that there is a process underway to revise or amend the A.P.P.R., is that correct?

A. That's correct.

88. Q. And the Agency is directing that process because it's been delegated that ability to do so in the 2023 amendments?

A. That's right, in consultation with [indiscernible].

89. Q. Okay. Now, we are two, almost three years since those amendments came into place. What's the status of those? Do you happen to know that?

A. The only thing I can say is that they went through the Canada Gazette part one consultation process and that the Agency, once they have considered the input received through that process, they will move to publish - they will make any appropriate amendments to the regulations based on those comments and they will move to publish in CG2, at which point they will come in force.

And CG2, I mean Canada Gazette part two. Sorry.

90. Q. Okay. Thank you for that. So, at paragraph 24 of your affidavit, you give evidence that the new process is a simplified mediation style. I just want to clarify based on your previous responses though that the mediation element is in fact optional. That if the parties do not reach-, or do not agree to mediate, do not reach a mediated outcome, that it does in fact go to an adjudicative step.

A. It goes to a final decision by the C.R.O.

91. Q. Right. So, as a presiding official in an adversarial process though at that point in time?

MS. ROBERTSON: I think that that's straying into the sort of legal questions that are at the nub of this. It's making some assumptions that I don't think are fair.

MR. JUDSON: Okay. Well, I think the question is more - I'll repackage the question for you. But I think that the fact witness is here to give evidence on the policy that underlies the framework, and so that's where - what I'm trying to get from him.

BY MR. JUDSON:

92. Q. So, Mr. Millette, if the parties, just from a, you know, looking at the policy - I'm not asking for a legal conclusion about anything - but looking at the policy, if the participants, the parties, the complainant and the airline do not agree to mediate, if the mediation falls apart, the process as designed in the policy that your work is responsible for crafting, the process then requires that it goes to a stage where the C.R.O. is

responsible for rendering a decision based on the representations that have been made?

A. That's right.

93. Q. Okay. And if that happens, if the C.R.O. makes an order, that order becomes legally binding on the parties?

A. Yes.

94. Q. Now, at paragraph 28 of your affidavit, you write that the C.R.O. does not determine legal rights but evaluates the appropriate level of compensation in light of the facts presented to them. You go on to indicate that the C.R.O. receives information to base their decision on. Is there in the policy some distinction that you're relying on between what information is versus evidence?

MS. ROBERTSON: As a factual question, whether or not there's a reference in the policy to information versus evidence, is that what you're asking? Because the question of what is evidence is a very technical legal question.

MR. JUDSON: Right. The terminology used in the affidavit is information, but it would seem to me that that is evidence, at least within this forum that the policy is created. So, that's what I'm trying to understand.

MS. ROBERTSON: Right. And what I'm saying back to you is that the question of what is evidence is a technical legal question that this witness is not in a position to answer, so.

BY MR. JUDSON:

95. Q. Well, maybe we can look at it this way. Mr.

Millette, maybe you can tell us about what types of information the parties would typically present to the C.R.O. as part of this process.

A. So, they would present - when filing their complaint, the passenger would provide their, a copy of their ticket. They would provide information as to why they think they are-, they should be awarded compensation. And the carrier would provide information as to why or why not they feel that the passenger is entitled to compensation and they would provide information about the reason for the delay or the cancellation.

96. Q. So, the information would include documents, I presume, relating to their air travel?

A. I don't know what form, in what form the information is being provided to the C.R.O.

97. Q. Right. But at some level they would need to prove that they were in fact a ticketed passenger on an airline and to satisfy the C.R.O. that they were in fact entitled to air travel, right?

A. I think that's [indiscernible].

98. Q. Right. And then so what you've described to me, they make argument as to why they're entitled to compensation. So, it would be incumbent on the complainant then to have looked at say the A.P.P.R., looked at the circumstances of their travel, and explained to the C.R.O. why the regulation entitles them to compensation?

A. Uh, not exactly, because under the new process it is incumbent upon the air carrier to show whether or not the passenger is entitled to compensation. But a passenger could go to the Agency and say, "I

believe I'm entitled to compensation," and it will be up to the air carrier to demonstrate to the Agency whether or not the passenger is entitled to compensation.

99. Q. Right. But both parties are at some level looking at the regulation, the A.P.P.R., looking at the circumstances of what happened in their travel experience and explaining why or why not compensation is triggered?

A. I wouldn't assume that passengers know the inside out of the A.P.P.R. I think it'd suffice to the passenger to go on the Agency website and fill the complaint form just based on their belief that the flight was delayed and/or cancelled and they are entitled to compensation.

100. Q. Okay. So, is what you're describing that it's really incumbent on the airline to rebut the entitlement to compensation? Is that what you're saying?

A. Yes, under the 2023 amendments, that's exactly it.

101. Q. Okay. So, at least on the responding party's side then, they are looking at the governing regulation, the A.P.P.R., the legislation, and the facts of the passenger's travel, and presenting some explanation as to why they do or do not believe a certain level of compensation is entitled?

A. So, I'm not familiar with all the inside workings of how the airlines are dealing with those complaints, but as I said, it is incumbent on the air carriers to demonstrate whether or not the passenger is entitled to compensation. I guess my response is I don't know how they go about doing that.

102. Q. Right. And I appreciate that this is, you know, these are case by case proceedings that are all

going to unfold a little bit differently too, so. So, would you agree though that after - like assuming mediation is off the table, you have the two parties in the dispute proceeding, the C.R.O. is now tasked with rendering a decision, that it is incumbent on the C.R.O. to determine what facts actually exist and then to apply the regulation and render a decision based on that?

A. Based on the information that it has been provided. The C.R.O. does not have the other investigative powers of the Agency, the members.

103. Q. Yes.

A. So, they [indiscernible]...

104. Q. Based on the...

A. ...and compare information from the air carrier.

105. Q. Yes, understood. Based on the information and representations made by the two parties, the C.R.O. is tasked with making a decision about what facts actually unfolded and then applying the regulation to those facts to, to make an order?

A. Yes.

106. Q. So, paragraph 33 of your affidavit, you indicate that compensation in an A.P.P.R. complaint is fact-specific and circumscribed to passenger-specific circumstances. And you go on to explain that the reason for that is that a single delayed flight may actually impact different passengers on that flight differently depending on what their routing and schedule was. Fair to say?

A. Yeah.

107. Q. Okay. So, earlier when we talked about the database of the public information that's made available

about the C.R.O.'s decisions, your suggestion was that the database allows passengers to see whether they might be entitled to compensation. And so, I just want to understand how that can be the case when the determinations are very fact-specific based on each passenger's particular itinerary.

A. So, it allows the passenger to, to know whether or not other cases on the same flight were awarded compensation and given information, give that passenger information as to whether or not they could file a complaint. But the passenger would know whether or not they've been delayed. So, it's - so, it provides a passenger information that could be useful, but it's not determinative information because it's still on a case by case basis.

108. Q. Right. So, if I'm a passenger on Air Canada flight 234 and I see that there is a complaint that's been entered to this database for that flight number on the same day that I travelled, you're saying that that could trigger me to consider whether I may also be entitled to a similar order that that person who made that complaint received, but I would have to figure that out?

A. That's right.

109. Q. Okay. And I would do that then by like looking at the A.P.P.R. and considering whether it's worthwhile to make a complaint to, well, first to the airline, and then if it doesn't resolve, then to the C.R.O.?

A. Again, I do not want to presume that passengers are looking at the A.P.P.R. I think it'd suffice to know that you've been delayed and that you may

be entitled to compensation to file a complaint with the Agency.

110. Q. Okay. But one of the tools that a passenger could use to determine whether they're entitled to compensation is to look at, to identify that a flight they've taken has resulted in compensation for another passenger and that therefore maybe they should see whether the regulation would similarly entitle them, right? That's something they could do?

A. Sure.

111. Q. So, paragraph 44 of your affidavit, you indicate that the public database that we've been speaking about that has the complaint data was set up to strike a balance between transparency and ensuring the speedier resolution of complaints. Can you just help me understand how the database achieves that?

A. Well, you can achieve transparency by putting out the relevant information, as we've been discussing, but also it removes the requirement for, for Agency members to write lengthy decisions on the cases.

112. Q. All right. So, I'm just going to share one of our affidavit exhibits with you. One moment. So, on my screen, this is exhibit (h) from the affidavit of Nancy Pierce that was filed in our application record. I presume that you've seen this before, Mr. Millette?

A. M'hmm.

113. Q. And you'd agree with me that this is a screenshot of an entry from the database that we've been speaking about?

A. That's right.

114. Q. Right. So, what particular transparency are these five pieces of data giving a member of the public

about their entitlement to compensation?

A. So, I see on there that as a passenger perhaps that was on the flight AC105 on April 29, 2023, and that others, at least one other person on that flight was-, received compensation for that flight disruption. So, that, that could trigger me to seek the same compensation if I was - like depending on my, my specific facts.

115. Q. Right. And this particular entry, it indicates that there was an order to compensate for inconvenience, but you'd agree that it doesn't actually specify what that inconvenience was or what compensation was ordered?

A. That's - I would agree with that.

116. Q. Okay. And again, this particular - well, we know from Ms. Pierce's affidavit that this particular flight was in respect of her routing from Toronto to Vancouver on that particular date. But as you said earlier, there's still, you would still need to, as a passenger who might have been on that flight, to consider whether you-, whether the circumstances applied the same to you, because in the circumstance where a different passenger say was travelling from Halifax to Vancouver and had a six-hour delay in, or six-hour stopover in Toronto, the total delay would not necessarily trigger compensation, correct?

A. That's correct.

117. Q. Right. So, I would still need to sort of look, you know, do some digging to figure out how exactly that flight's ultimate schedule might have impacted me as a passenger, right?

A. So, as I said a few times now, it's not

incumbent on the passenger to make that determination. The passenger just could decide that they were delayed six hours on that specific flight without considering any other legs and they could just, based on that delay, go to the Agency. And it would be incumbent on the air carrier to tell the Agency this passenger, the six hours, a six hours stayover or layover in Toronto, so therefore on their entire journey they have in fact not been delayed.

118. Q. Right.

A. So, it's not, it's not incumbent on the passenger, it's incumbent on the carrier.

119. Q. Okay. And earlier, I think you stated that part of the reason for the database is to prevent the need for the C.R.O. to issue lengthy decisions. Is that part of the, the thinking behind this?

A. That was part of the thinking, yeah, this is.

120. Q. Okay. So, I just want to show you this document. So, this is exhibit (g) from Ms. Pierce's affidavit and she's appended the decision that the C.R.O. made in her matter. And as you can see, it's three pages. Pretty small font. Goes through, I mean at least how I would see it, you know, a usual adjudicative decision that provides the legal framework, some analysis, and then an order at the end. But from this, there's just a few data fields that are published in the database. Like you'd agree that this is, this is not really-, doesn't seem to be relieving the C.R.O. of writing a lengthy decision?

A. So, I'm not sure [indiscernible], did I? But I would say it's not a lengthy decision based on the 20 or 30 pages decisions that the Agency members would,

would issue before this.

121. Q. Right. And you'll see at the top of this page here it says the remedies ordered include compensation for inconvenience, which we saw on the database. What we didn't see on the database is that there was a reimbursement for replacement upgrade, which was a separate head of compensation that was ordered. And you'd agree that that was not published on the database?

A. I agree that this specific heading was not published on the database, but in my view, this could - not being upgraded as you would be entitled, I would clearly classify that as an inconvenience.

122. Q. I'm sorry, I didn't catch - could you just say that last part again? I'm sorry.

A. So, not being offered the upgrade that you would otherwise be entitled to, to me that's an inconvenience. But it's very - I guess it's a question of fact for the Agency.

123. Q. Okay. But if I were another passenger who say had been denied my upgrade that I had paid for, how would I, how would the database help me determine that I might have the ability to make a claim for compensation to a C.R.O.?

A. So, this is - so, this reimbursement for upgrade is a matter of the air carrier's tariff and it's not an A.P.P.R. matter. But again, just, just knowing that there was a compensation for inconvenience in general inaugurates enough information for another passenger who has been inconvenienced in any way, because of a delay or because they didn't receive their upgrade, to seek similar compensation.

124. Q. Okay. So, you're saying it's not enough

information? Is that what you said?

A. I'm saying it's enough information.

125. Q. Okay. But this particular information, as far as we know, because it's part of the tariff - and you're saying because it's part of a tariff and not the A.P.P.R., that's why it's not on the database?

A. I don't know why it's not on the database. The Agency determines how they classify what they are publishing on the database. I guess my answer is that it would be a question for them, for the Agency.

126. Q. Are there any processes in place to ensure the information published on the database is an accurate reflection of the decisions?

A. I don't know.

127. Q. Is it the C.R.O. themselves that makes the entries to the database, or does someone else do that?

A. I don't know.

128. Q. Okay. So, at paragraph 36 of your affidavit, you describe section 85.13 of the Act. And I think you, you talked about this earlier, but I just want to double click on it a little bit. In that section, in your evidence, is that the chairperson of the Agency can refer a more factually complex or precedent-setting matter to a panel of two G.I.C. appointed Agency members after an unsuccessful mediation. You'd agree that's what you've written in the affidavit? Sorry, I just want to make sure that was on the record. I didn't hear you.

A. Yes.

129. Q. Thank you. So, I think you indicated earlier that where that section is triggered, the procedures revert to the 2014 rules that we looked at earlier. Is that correct?

A. That's my understanding.

130. Q. Okay. And so where that happens, does the presiding officials, the two G.I.C. appointees who are hearing that complaint, do they then have different powers than a C.R.O. would have in terms of procedure such as like summoning witnesses or other tools like that?

A. They would.

131. Q. Okay. What process is it that would even alert the Agency to the fact that a particular complaint maybe should be dealt with in this, in this unique way?

A. So, I believe it's a determination from the C.R.O. receiving the, the complaint could decide that there is like broader policy issues with this complaint and that would need review by that panel and that officer would make the recommendation to the Chair to have this specific complaint reviewed by the panel.

132. Q. Okay. So, in sports referee lingo, they call it upstairs. Okay.

A. Am I supposed to *[indiscernible]*?

MS. ROBERTSON: I don't know what that means, so...

MR. JUDSON: It wasn't a question. Just a comment. That's fine.

BY MR. JUDSON:

133. Q. Okay. So, at paragraph 38 of your affidavit, you indicate that it would be impossible to achieve the objective of efficient and effective consumer protection if the Agency were required to treat C.R.O. processes as quasi-judicial or to publish decisions. Can you just expand a bit on what the basis for that conclusion is?

A. So, as I said earlier, under the old process,

the Agency member would publish very lengthy decisions, 20-30 pages each, and that, that in itself took a long time for, for them to do. And on top of that, those decisions needed to be translated in both official languages. So, so, all of that is what contributed to the 373 days average review. And under the new C.R.O. process, the entire length of the review has to be under 90 days, which is a significant improvement.

134. Q. Has to be under what? Sorry, I didn't catch that last part.

A. Ninety days total including the mediation. So, it's 30 days for mediation and then 60 days for a required decision.

135. Q. Okay.

A. So, it's, as I said, it's a significant improvement over the 373 days.

136. Q. Okay. So, that 90-day period, at the end of that if there is an order made, is the order then entered to the database, you know, at that point in time?

A. I don't know. I don't know when exactly they would input the decision in the database.

137. Q. Do you have any information about how many CROs there are doing this work?

A. At present, I believe it's around 98 CROs.

138. Q. And those are all staff of the agency who have been designated as CROs for that purpose?

A. That's right.

139. Q. Okay. Do you happen to know how many decisions are rendered in, say, like a typical week or a business day or anything like that?

A. Uh, so, on average, each C.R.O. deals with one complaint every day.

140. Q. Now, your paragraph that we started this conversation with, paragraph 38, refers to the challenge of publishing decisions, but it's the case that the openness of a, of, say, of the process would not necessarily require publishing but that they be available on request. Those are - you acknowledge those are different things?

A. So, the policy intent is, was that the specific information that is, that is accumulated and that we saw in that database would be published. So, there's no requirement to publish or make otherwise available any other information.

141. Q. Right. But your statement that a requirement to treat the C.R.O. process as quasi-judicial or to publish decisions would render the efficiency goals impossible, that presumes that the decisions are being published, right? And you, would you agree with me that the files could be open without necessarily publishing every C.R.O. decision?

A. Again, I will repeat my answer that the policy intent was to make, only make available the specific information that we saw in that, in that document.

142. Q. I'm just going to share a section of our material from-, on my screen. Just give me one moment. So, you had stated earlier, Mr. Millette - and I think you repeat this in your affidavit in a few provisions - that the earlier complaint processes prior to the current framework coming into being required some proactive effort on the part of the Agency to redact confidential information that was submitted as part of those processes. And you gave the examples of, pardon me,

credit card numbers and photos from identification and things of that nature. You agree with me on that?

A. Yes, they would make a proactive effort to, to ensure that personal, sensitive information would not be disclosed.

143. Q. What was the regulation that would compel them to do that? Because when I look at the 2005 and 2014 rules, both of them would appear to make confidentiality not an automatic mechanism; that a person has to apply for it or request it and meet the requirements. So, what law was governing the effort to, to do that?

A. So, the - so, when the complaint came into or reached the adjudication stage, the governing principle is that the information would be public. But as I said, the Agency would make a proactive effort to not disclose sensitive information.

144. Q. Okay. I'm just going to share this with you. One moment. All right. So, this is from our client's reply affidavit. And you'll see here at paragraph 23, he has excerpted a portion of the 2005 rules. You'll see in the preamble here he's, he's described that. And it says that, at section 23(1) of the 2005 rules, "The Agency shall place on its public record any document filed with it in respect of any proceeding unless the person filing the document makes a claim for its confidentiality in accordance with this section." So, I take that to mean that unless the person is asking for something to be redacted, that it becomes part of the public record. Is there a part of this regulation that we are missing that compels the Agency to, to voluntarily conceal information?

A. So, as I said, there is nothing mandating the

Agency to conceal that information, but the Agency would in a proactive manner. And again, it's restricted to like very sensitive information like credit card numbers and like passports and things like that.

145. Q. Okay. And then just to scroll down in our client's affidavit here, on the next paragraph, he includes a section from the 2014 rules. You'll see here he describes that. And then he refers to sections 7(2) and 31(1) of those rules. You'll see at section 7(2), it says, "All filed documents are placed in the Agency's public record unless the person filing the document files at the same time a request for confidentiality under section 31 in respect of the document." And then section 31 appears to provide some direction as to what is to be included with that request. So, you'd agree though that again this version of the rules, just like the 2005 rules, generally would set out that confidentiality is not automatic, that it's incumbent on the person to request it? You would agree that that is generally the regulatory scheme at that point in time?

A. That's what this says, yes.

146. Q. Okay. Thank you for that. So, paragraph 40 of your affidavit, you specify that the confidentiality provisions were implemented for several reasons, one of which was, was that a tenet of mediation is that it remains confidential. So, again, I just want to clarify though that the entire process of the C.R.O. is not mediation, correct?

A. Mediation is part of the process.

147. Q. It's part of the process if the party agrees to mediate, but it's not the entire process, correct?

A. That's correct.

148. Q. And so, essentially what you're stating here is that this premise from mediation is being applied to non-mediation proceedings?

A. Sure.

149. Q. So, paragraph 40, you also say that there are several reasons for the confidentiality provisions. I think you've talked about one or two of them. Are there any other reasons for the confidentiality provision in 85.09 of the Act?

A. Those are the main reasons.

150. Q. Pardon me, sorry?

A. Those are the main reasons.

151. Q. Thank you. You indicate in this part of your affidavit as well that one of the reasons for confidentiality is that the airlines might be less likely to offer compensation during mediation if the process were public. I guess I just want to clarify though that the complainant, the passenger, would have had to have made their complaint to the airline unsuccessfully before they even commence the process, right?

A. That's right.

152. Q. So, the likelihood of - like there would already have been a private process by which the airline could have offered compensation, correct?

A. That's correct.

153. Q. Now, do you have any information, going back to the database that we've talked about, about why those particular fields of data were chosen to be published versus other pieces of data?

A. So, those particular fields there were chosen because we believed when we developed the policy that these would be sufficient information for other

passengers, to help inform other passengers whether or not they should seek compensation.

154. Q. Right. So, and again, it does necessarily require the passenger to do their own research around whether they might have an entitlement or it's worthwhile to make that complaint?

A. That's right.

155. Q. So, at paragraph 45 of your affidavit, you state that the changes to the Agency's resolution processes under the *Act* continue to see growth in the complaint backlogs and you indicate that there are currently 85,000 complaints outstanding. Does the Agency take steps to join complaints that could be disposed of together because they involve the same issue or the same flight routing or anything like that?

A. I don't know that.

156. Q. And I'm just about wrapping up here. Mr. Millette, are you aware of a current proposal to levy administrative monetary penalties for breaches of section 85.09(1) of the *Act*?

A. Uh, yes, as referenced in Mr. Lukacs' affidavit, there was a proposal to designate a number of provisions for, for administrative monetary penalty, but those, that proposal, that regulation is not yet enforced or has not yet seen the light of day.

157. Q. And is that, did that proposal in respect of this section originate with your department?

A. No.

158. Q. Where is - whose recommendation is that?

A. The Agency.

159. Q. Okay. And what is it your understanding that the purpose of that is?

A. My understanding of the purpose is that if they want to designate the provision, they can't - as regulations, they can't carve out part of the provision. If they want to designate the provision for the air carriers, they need to designate the provisions for everyone. But again, I would like to say and emphasize that this regulation has not, has not seen the light of day.

MR. JUDSON: I understand. I'm at the end of my notes. I would like to propose we just recess for a few minutes while I just check and then I'll come back and wrap up. Is that okay, Counsel?

MS. ROBERTSON: That's fine. I just wanted to let you know I have a couple of follow-up questions as well.

MR. JUDSON: Okay. That's no problem. So, maybe we could just take a, like even five minutes. Is that okay, Amy? Okay, thanks.

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MR. JUDSON: Okay, I usually would say before we break in a virtual examination that I trust that counsel did not talk to their client while he was on the stand, so.

MS. ROBERTSON: We were talking about northern Ontario.

MR. JUDSON: Oh, okay. Well, it's one of my favourite topics, so.

MS. ROBERTSON: There you have it.

MR. JUDSON: I have no further questions. So, Ms. Robertson, if you want to go ahead, it's your

witness.

MS. ROBERTSON: Wonderful, thank you. I just have two, so this will be brief.

RE-EXAMINATION BY MS. ROBERTSON:

1. Q. So, the first question is you were asked a number of questions about how passengers would know whether to bring their own complaints based on the information that's made public from a C.R.O. order. Do you recall those...

A. M'hmm.

2. Q. ...that theme? Are you aware what other information or other sources of information air passengers have about their rights when they have a flight that is delayed or cancelled?

A. Yes. The air carriers are required to provide the passengers with information about the A.P.P.R. and their rights. So, it needs to be readily available to the passengers. And it could be done in various ways. Oftentimes, you would have a summary printed on the ticket or you would have hyperlinks made available to the passenger where it would give them the information about their rights under A.P.P.R. This is a requirement of the A.P.P.R.

3. Q. Okay. And what sort of information in that regard does the Agency make available to air passengers?

A. So, also, the Agency has a website of the air passenger rights where we provide a summary and-, of the regulations in a manner that is easily understandable for a person.

4. Q. Thank you. And then my second topic is you were asked some questions, again it has to do with the

information made public about the Complaint Resolution Officer's orders. You were shown an excerpt from the database which refers to compensation having been awarded. And my question is how does the amount of compensation awarded to one passenger affect the compensation that would be awarded to another passenger even on the same plane?

A. So, there are clear amounts of compensation in the A.P.P.R. based on the length of the delay and whether or not the carrier is a small or a large carrier, and so a passenger that experienced a different plane, a different length of a delay could be awarded a different compensation than the other passenger based on those very strict, clear provisions under the A.P.P.R.

MS. ROBERTSON: Thank you. Those are my questions.

MR. JUDSON: All right. So, thank you, Mr.

Millette. I appreciate your time this morning and your candor with us.

EXAMINATION CLOSED

Examination of Vincent Millette - Certification

THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription of the proceedings contained herein to the best of my skill and ability.

A handwritten signature in blue ink, appearing to read "A. Vaillant", is written over a horizontal line.

Amy Vaillant

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